

**LEGAL SERVICES AGREEMENT BETWEEN
THE CITY OF MILPITAS AND
JONES HALL
A PROFESSIONAL LAW CORPORATION**

THIS AGREEMENT FOR LEGAL SERVICES is made and entered into this ____ day of _____, 2006, by and between the City of Milpitas (the "City") and Jones Hall, A Professional Law Corporation, San Francisco, California ("Attorneys").

WITNESSETH:

WHEREAS, the City anticipates that it will issue bonds or cause the execution and delivery of Certificates of Participation (the "Obligations") in the approximate principal amount of \$10,000,000 to provide funds to finance improvements to the City's Main Sewage Pump Station; and

WHEREAS, the City has determined that Attorneys are specially trained and experienced to provide services as Bond Counsel for accomplishing the issuance of the Obligations, and Attorneys are willing to provide such services; and

WHEREAS, the City has determined that Attorneys are specially trained and experienced to provide services as Disclosure Counsel in connection with the sale of the Obligations, and Attorneys are willing to provide such services; and

WHEREAS, the public interest, economy and general welfare will be served by this Agreement for Legal Services.

NOW, THEREFORE, IT IS HEREBY AGREED, as follows:

Section 1. **BOND COUNSEL DUTIES OF ATTORNEYS.** Attorneys shall provide bond counsel services in connection with the authorization, execution, delivery and consummation of the financing proceedings relating to the Obligations. Such services shall include the following:

- a. Confer and consult with the officers and administrative staff of the City as to matters relating to the financing proceedings;
- b. Attend all meetings of the City Council and any administrative meetings at which any proceedings are to be discussed, deemed necessary by Attorneys for the proper planning of the financing proceedings or when specifically requested to attend;
- c. Prepare any required resolutions, notices and legal documents necessary for the proper conduct of the financing proceedings relating to the Obligations;
- d. Review all financial documents for legal sufficiency;

e. Review, without undertaking an independent investigation, any official statement or other disclosure document prepared in connection with the financing proceedings to assure correctness of disclosure relating to the legal documents prepared by Attorneys;

f. Prepare and provide a signature and no-litigation certificate, an arbitrage certificate and any and all other closing documents required to accompany the issuance of the Obligations;

g. Prepare and provide a complete transcript of the conduct of the proceedings necessary to accompany issuance of the Obligations;

h. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys that the interest with respect to the Obligations is excludable from gross income for purposes of federal income taxation and that the interest with respect to the Obligations is exempt from California personal income taxation;

i. Subject to the completion of proceedings to the satisfaction of Attorneys, provide the legal opinion of Attorneys approving the legality of the proceedings relating to the issuance of the Obligations;

j. Such other and further services as are normally performed by special counsel in connection with the issuance of Obligations; and

k. Attorneys will not be responsible for the preparation or content of the official statement prepared by the City's disclosure counsel or by underwriter's counsel other than (i) to examine and comment on said official statement as a member of the financing team, and (ii) to include in its standard supplemental opinion a customary opinion with respect to sections of the Official Statement containing description of the Obligations and the legal documents relating to the Obligations.

Section 2. **DISCLOSURE COUNSEL DUTIES OF ATTORNEYS.** Attorneys shall also provide disclosure counsel services in connection with the authorization, issuance and consummation of the financing proceedings relating to the Obligations. Such services shall include the following:

a. Prepare the Preliminary Official Statement and final Official Statement, or other disclosure documents in connection with the offering of the Obligations;

b. Confer and consult with the officers and administrative staff of the City as to matters relating to the Official Statement;

c. Attend all meetings of the City and any administrative meetings at which the Official Statement is to be discussed, deemed necessary by Attorneys for the proper exercise of their due diligence with respect to the Official Statement, or when specifically requested by the City to attend;

d. On behalf of the City, prepare the notice inviting bids or bond purchase contract pursuant to which the Obligations will be sold; and

e. Subject to the completion of proceedings to the satisfaction of Attorneys, provide a letter of Attorneys that, based upon their participation in the preparation of the Official Statement, but without independently verifying or establishing facts, the Official Statement or other disclosure document does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 3. **COMPENSATION.** For serving as Bond Counsel in connection with the issuance of the Obligations, Attorneys will be paid a fee based on the following schedule:

1% of the first \$1,000,000 of Obligations; plus
1/2% of the next \$4,000,000 of Obligations, plus
1/4% of the next \$10,000,000 of Obligations; plus
1/8% of the principal amount in excess of \$15,000,000 of Obligations.

Disclosure Counsel. For serving as Disclosure Counsel in connection with the sale of the Obligations, Attorneys will be paid a flat fee of \$25,000.

In addition, Attorneys shall be reimbursed for any costs advanced by Attorneys on behalf of the City, including delivery and messenger services, closing costs, duplication costs, transcript binding costs and expenses for travel outside the State of California, if any, but specifically excluding travel expenses within the State of California. The City's reimbursement of Attorney's expenses, other than publication costs, if any, shall be capped at \$2,500.

Payment of said fees and expenses, other than publication costs, if any, are contingent upon the successful closing of the Obligations, shall be due and payable upon the delivery of the Obligations and shall be payable solely from the proceeds of the Obligations and from no other funds of the City.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Attorneys shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Attorneys and its agents, representatives, employees, and subcontractors. Attorneys shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Attorneys shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Attorneys' price. Attorneys shall not allow any subcontractor to commence work on any subcontract until Attorneys has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

4.1 **Workers' Compensation.** Attorneys shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Attorneys. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative,

Attorneys may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Risk Manager. The insurer, if insurance is provided, or the Attorneys, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Attorneys, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Attorneys, including the insured's general supervision of Attorneys; products and completed operations of Attorneys; premises owned, occupied, or used by Attorneys; and automobiles owned, leased, or used

by the Attorneys. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of ATTORNEYS to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3 Professional Liability Insurance. If Attorneys shall be performing licensed professional services, Attorneys shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

4.3.1 Any deductible or self-insured retention shall not exceed \$250,000 per claim.

4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4.3.3 The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.

- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Attorneys must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Attorneys' sole cost and expense, any extended reporting provisions of the policy, if the Attorneys cancels or does not renew the coverage.
- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

4.4 Requirements for All Policies.

- 4.4.1 **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Standard and Poors' rating of no less than A.
- 4.4.2 **Verification of coverage.** Prior to beginning any work under this Agreement, Attorneys shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.4.3 **Subcontractors.** Attorneys shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4.4 **Deductibles and Self-Insured Retentions.** Attorneys shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Attorneys may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Attorneys procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

- 4.4.5 **Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Attorneys shall provide written notice to City at Attorneys' earliest possible opportunity and in no case later than five days after Attorneys is notified of the change in coverage.

4.5 **Remedies.** In addition to any other remedies City may have if Attorneys fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Attorneys' breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Attorneys to stop work under this Agreement or withhold any payment that becomes due to Attorneys hereunder, or both stop work and withhold any payment, until Attorneys demonstrates compliance with the requirements hereof; and/or
- Declare Attorneys in material breach of the Agreement and terminate the Agreement.

4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

Section 5. INDEMNIFICATION AND ATTORNEYS' RESPONSIBILITIES. Attorneys shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Attorneys or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Attorneys shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Attorneys or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Attorneys to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Attorneys from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Attorneys acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

Section 6. **EXCEPTIONS.** Any services rendered in any litigation (other than validation proceedings deemed necessary by Attorneys) involving the City or the financing proceedings relating to the Obligations are excepted from the services to be rendered for the above compensation. On-going advice and preparation of necessary documentation regarding compliance with Section 148 of the Internal Revenue Code of 1986, relating to arbitrage limitations and rebate provisions, or in respect of reporting

requirements of the Securities and Exchange Commission, are also excepted from the services to be rendered for the above compensation. For such services which Attorneys are directed to render for and on behalf of the City, compensation shall be on the basis of reasonable fees to be agreed upon by the City and Attorneys.

Section 7. **TERMINATION OF AGREEMENT.** This Agreement for Legal Services may be terminated at any time by the City, with or without cause, upon thirty days written notice to Attorneys. In the event of such termination, all finished and unfinished documents shall, at the option of the City, become their property and shall be delivered by Attorneys to the City.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

CITY OF MILPITAS

Jones Hall
A Professional Law Corporation

Charles Lawson, City Manager

Stephen G. Melikian

ATTEST:

Mary Lavelle, City Clerk

Taxpayer Identification Number

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

Department/Division Head

APPROVED:

Finance Director/Risk Manager